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Supreme Court of the United States

OCTOBER TERM, 1953

THE AMERICAN AUTOMOBILE ASSOCIATION (INCORPORATED) and AUTOMOBILE CLUB OF NEW YORK, INC.,

Petitioners,

against

MURRAY SPIEGEL, doing business as LAKE SERVICE STATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

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MURRAY SPIEGEL, doing business as LAKE SERVICE STATION,

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above cause on June 25, 1953.

Opinions Below.

The opinion of the District Court (290-321)* is reported at 101 F. Supp. 185 and the opinion of the Court of Appeals (pp. 186-193) is No. 242, 2nd Cir., June 25, 1953.

Jurisdiction.

The judgment of the Court of Appeals was entered on June 25, 1953 (p. 194). The jurisdiction of this Court is invoked under 28 U. S. C. § 1254 (1) and 15 U. S. C. § 1122.

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* All references, unless otherwise noted, are to the appendices to the briefs in the Court of Appeals and to the folios of such appendices.

Questions Presented.

The questions presented are:

1. Whether The Lanham Trade-Mark Act, Act of July 5, 1946, 60 Stat. 427, Incorporated in 15 U. S. C. §§ 1051-1127, gives general jurisdiction to the federal district courts over actions for unfair competition.

2. Whether a counterfeit or colorable imitation of the registered mark of another applied to a sign used in connection with the sale in commerce of goods or services renders the unauthorized user liable to a civil action and injunction under The Lanham Trade-Mark Act, even though such use is not likely to cause confusion or mistake or to deceive purchasers as to the origin of such goods or services.

3. Whether the confusing and deceiving use of a counterfeit or colorable imitation of a registered mark of another applied to a sign in connection with the sale of goods or services gives rise to a "substantial" claim under the trade-mark laws within 28 U. S. C. § 1338(b) even though such confusion or deception does not relate to the *origin* of the goods or services.

4. Whether a citizen is entitled to effective protection, as is provided to certain foreign nationals by The Lanham Trade-Mark Act and by certain treaties, to repress unfair competition affecting the citizen's commerce among the several states.

5. Whether the Court of Appeals improperly decided a question of federal law in holding that The Lanham Trade-Mark Act does not grant federal jurisdiction over all

claims, by those engaged in interstate commerce, for unfair competition even though the offending acts are not themselves in interstate commerce.

Statutes Involved.

The Lanham Trade-Mark Act, Act of July 5, 1946, 60 Stat. 427, Incorporated in 15 U. S. C. §§ 1051-1127; and 28 U. S. C. § 1338. The pertinent statutory provisions are reprinted in the Appendix.

Statement.

1. Petitioners brought suit under the trade-mark laws of the United States to enjoin respondent from infringing the registered trade-mark of the petitioner, The American Automobile Association (Incorporated), (hereinafter called the "Association"), such trade-mark consisting of the letters "AAA" enclosed in an oval, and to restrain respondent from engaging in unfair competition with the Association and the petitioner, Automobile Club of New York, Inc. (hereinafter called the "Club").

2. The respondent's answer constituted, in effect, a general denial. It asserted the defense of unclean hands alleging that the petitioners violate the Administrative Code of the City of New York in displaying their trade-mark and that the plaintiffs use the said trade-mark as a means of unlawfully restraining trade and creating a monopoly. The Court of Appeals did not pass upon these defenses.

3. Subsequent to respondent's serving his answer and after various depositions were taken by both petitioners

and respondent, petitioners moved for summary judgment which was granted.

4. In granting the motion the District Court found that respondent did not deny using and displaying the "AAA" which pertains to petitioners; that respondent's purpose in so using the "AAA" was "too flagrant to admit of discussion" and that the affirmative defenses were without merit.

5. Respondent appealed from the summary judgment and the United States Court of Appeals for the Second Circuit reversed the District Court and remanded the cause for trial. It held that infringement of the registered mark had not been sufficiently developed by the proof and that, absent such proof, the District Court lacked jurisdiction over the cause of action for unfair competition. Its determination is in direct conflict with that of the Court of Appeals for the Ninth Circuit.

6. The Association is a non-profit corporation organized under the laws of the State of Connecticut (8, 146, 188; 373). The Club is a membership corporation organized under the laws of the State of New York (9, 264). The purposes of the petitioners include the creation and maintenance of favorable motoring conditions, and, in promoting such conditions, the advocacy of legislation and the education of motorists and the public at large in traffic safety (10-13, 146-147, 292; 373). The Association, at the commencement of this action, had a membership of over 2,700,000 motorists in all states of the United States (10, 31, 292-293), and the Club a membership in excess of 210,000 motorists (13, 31, 292-293).

7. The trade-mark of the Association comprises the letters "AAA" enclosed in an oval. It has been registered

with the United States Patent Office as applied to goods in a variety of classes (15-17, 151; 370-372; 499-501).

8. The Club is an organization affiliated with the Association (148; 373; 456-459). Subject to the control and regulation of the Association, the Club has the exclusive right to use the Association's trade-mark in the territory in which it is authorized to operate (13, 148-150, 156-158). This territory includes Kings County where respondent's filling station is located (9, 13).

9. The Association, through the Club and other related companies, grants to certain establishments rendering services to motorists, including filling stations, the right to display the "AAA" emblem. Such display is subject to regulations adopted by the Board of Directors of the Association (364-369; 469-470; 502-513). In granting affiliation the Club requires the filing of an application giving data concerning the management and character of the station. The Club considers the physical condition of the station, the financial responsibility of the owner, and the need for such station to serve members of the Club (158-161; 233-240). The Club and the affiliated station execute a written contract providing for the display of the official "AAA" emblem furnished to the station by the Club. Either party has the right to cancel upon seven days notice, in which case the station is required to return the official emblem to the Club (161-2, 164; 374-387; 514-525, 526-531).

10. The Club supervises and controls the nature and quality of the services rendered by affiliated stations; regular inspections of the stations are made by Club representatives, complaints of members are investigated, and corrective action is taken when necessary (162-3).

11. The respondent's activities are thus described by him in his brief in the Court below, the argumentative material being omitted:

> "Appellant, the owner of a small gasoline station in Brooklyn displayed an oil-cloth sign suggesting the familiar 'AAA' insignia. Appellant had first applied for affiliation with appellees, but was * * * refused admission without * * * being told why he was rejected. Appellant then erected his sign in July 1949 * * * to meet the * * * competition of stations affiliated with the Club, which displayed the official 'AAA—Savings Plan' emblem * * *"

12. Respondent has admitted that he caused to be painted and displayed at his place of business the sign in question (403-404) and that his use of the letters "AAA" within an oval was intended to suggest the official emblem of the Association and to induce motorists to believe that his station was in some way related to the Association and the Club due to the fact that the petitioners' members would be familiar with the "AAA" emblem (182-183).

Specification of Errors to be Urged.

The Court of Appeals erred:

1. In holding that infringement of a trade-mark under The Lanham Trade-Mark Act requires that a mark be used so as to cause confusion or mistake or to deceive purchasers as to the source of origin of goods or services.

2. In holding that the confusing and deceiving use of a counterfeit or colorable imitation of a registered mark as a sign in connection with the sale of goods or services is not a substantial violation under The Trade-Mark Act of 1946.

3. In not holding that 15 U. S. C. § 1114 (1) (b) was applicable to sustain the judgment of the District Court.

4. In ignoring the "intent" of the Act as expressed at 15 U. S. C. § 1126, and in holding that there was no jurisdiction because defendant's business was altogether intrastate.

5. In holding that 15 U. S. C. §§ 1126 (b), 1126 (h) and 1126 (i) do not give jurisdiction to the District Court over an action brought by a plaintiff with whose interstate commerce a defendant has unfairly competed.

6. In reversing the District Court's judgment of infringement.

Reasons for Granting Writ.

(1) The decision as to which review is sought is in direct conflict with the decisions of the Court of Appeals for the Ninth Circuit on the same questions of federal law.

The opinion of the Court of Appeals held that The Lanham Act does not give jurisdiction to the district courts over a claim brought by a plaintiff with whose interstate commerce the defendant has unfairly competed unless such claim be joined with a substantial claim under the trademark laws and related to the claim of unfair competition. This holding is in conflict with and contrary to the decision of the Court of Appeals for the Ninth Circuit in *Stauffer* v. *Exley*, 184 F. 2d 962 (9th Cir., 1950). In that case it was held that a California corporation's unregistered trade name used in interstate commerce could be protected in a federal district court in an unfair competition suit against a California infringer. The holding below also conflicts with *Pagliero* v. *Wallace China Co.*, 198 F. 2d 339 (9th Cir., 1952), in which the Court held that The Lanham Act gives

to the federal courts jurisdiction over all claims for unfair competition by those engaged in interstate commerce, even though the violations are not themselves in interstate commerce.

The Court of Appeals below in reaching its decision examined the section of The Lanham Act set forth in 15 U. S. C. § 1126 in the light of the *Stauffer* and *Pagliero* cases, *supra,* and expressly rejected the rule laid down by the Court of Appeals for the Ninth Circuit. Thus, The Lanham Act, enacted to create uniform rights throughout the United States, has been divergently interpreted. To effectuate the Congressional intent this conflict of opinions should be resolved.

The decision of the Court of Appeals below is also in conflict with the dictum of the Court of Customs and Patent Appeals in *In Re Lyndale Farm,* 186 F. 2d 723 (C. C. P. A., 1951). After discussing the provisions of Section 1126 of Title 15 U. S. C., the Court stated at page 726:

> "Thus it is that a federal cause of action exists in behalf of a United States citizen or resident whose *trade name* is unfairly used in a manner affecting commerce whereby the remedies of the Lanham Act provided for the infringement of registered marks are made available in repressing such acts of unfair competition affecting unregistered trade names."

This Court has not passed on this particular point of federal law. However, in *Steele et al.* v. *Bulova Watch Co., Inc.,* 344 U. S. 380, 73 S. Ct. 252, 97 L. Ed. 192 (1952), it emphasized "the broad jurisdictional grant in the Lanham Act." It adverted to "that Act's sweeping reach into 'all commerce which may lawfully be regulated by Congress' " and reiterated that the Act "confers broad

jurisdictional powers upon the courts of the United States." Not only should this Court nullify a decision which does violence to the philosophy of the Act but it is respectfully submitted that it should minimize the complexity and put an end to the controversiality which conflicting decisions have engendered and to which it referred at pages 282 and 283 of the *Bulova Watch* case when it said:

> "Resolution of the jurisdictional issue in this case therefore depends on construction of exercised congressional power, not the limitations upon that power itself. And since we do not pass on the merits of Bulova's claim, we need not now explore every facet of this complex and controversial Act."

In a footnote to the word "complex", this Court cited, among others, the case of *Stauffer* v. *Exley*, 184 F. 2d 962 (9th Cir., 1950), which is directly contrary to the decision of the Court of Appeals below.

In the latter case the Court of Appeals for the Ninth Circuit in interpreting the effect of Section 1126 of the Act, stated at pages 965 and 966:

> "The protection granted by the Lanham Act against unfair competition, however, is limited by §1126(h) of the Act to 'the remedies provided in this chapter for infringement of marks * * * so far as they may be appropriate in repressing acts of unfair competition'. The general provision for remedies against trade-mark infringement is §1114(1), which provides: 'Any person who shall, *in commerce*, (a) use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of any registered mark in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers as to the source and origin of such goods or services * * *, shall be

liable to a civil action by the registrant for any or all of the remedies hereinafter provided in this chapter * * *.' Section 1127 provides: 'In the construction of this chapter, unless the contrary is plainly apparent from the context—* * *

"'The word "commerce" means all commerce which may lawfully be regulated by Congress.'

* * *

"The protection given by the Act against unfair competition is similarly limited to that which may be lawfully regulated by Congress. The remedies available under §1114 would not be 'appropriate' under §1126(h) for the repression of unfair competition unless the defendant in the unfair competition action met the §1114 requirement of acting 'in commerce'. In the event §1126(h) were not subject to the limitation contained in §1114 that the defendant must have acted 'in commerce,' §1126(h) would be subject to a claimed invalidity because it in whole or in part provided a remedy for acts beyond congressional power to regulate. In re Trade-Mark Cases, 1879, 100 U. S. 82, 25 L. Ed. 550. We think that by including the phrase 'in commerce', Congress meant to confine the remedies provided against unfair competition to the area of its constitutional competence."

The Court pointed out that an infringement committed in intrastate commerce but affecting interstate commerce could clearly be regulated by Congress and thus would be within the present Act, citing *Houston, East and West Texas Railway Co.* v. *United States; Texas and Pacific Railway Co.* v. *United States,* 234 U. S. 342, 34 S. Ct. 833, 58 L. Ed. 1341 (1914), and *Wickard* v. *Filburn,* 317 U. S. 111, 63 S. Ct. 82, 87 L. Ed. 122 (1942). In the latter case this Court at page 122 stated:

"It was soon demonstrated that the effects of many kinds of intrastate activity upon interstate

commerce were such as to make them a proper subject of federal regulation."

In *Pagliero* v. *Wallace China Co.*, 198 F. 2d 339 (9th Cir., 1952), the Court of Appeals for the Ninth Circuit in interpreting the very same subdivisions of Section 1126 of the Lanham Act as did the Court of Appeals below, stated at page 341:

> "There is, however, an independent ground for federal jurisdiction in a case such as this involving, as it does, a 'naked' claim of unfair competition. In *Stauffer* v. *Exley*, 9 Cir., 184 F. 2d 962, we held that where there is present the requisite effect on interstate commerce, the Lanham Act created substantive rights and remedies available to United States citizens and neither diversity of citizenship nor jurisdictional amount need be present. 15 U. S. C. A. Sec. 1121. The scope of the rights created by the Lanham Act, 15 U. S. C. A. §§ 1125, 1126(b), 1126(g), 1126(h), 1126(i), has not as yet been subjected to full judicial scrutiny; but the test in this situation is no different from that of other tests for federal jurisdiction. If the complaint raises a substantial claim of federal right under the Lanham Act the District Courts have jurisdiction of the case notwithstanding it may ultimately be found that the alleged right was not created by the Act. *Bell* v. *Hood*, 327 U. S. 678, 66 S. Ct. 773, 90 L. Ed. 939."

At the time of the above decision, July 1, 1952, the Court stated that subdivisions (b), (g), (h) and (i) of Sec. 1126 had "not as yet been subjected to full judicial scrutiny", and the situation remains the same today.

It must be noted that not only is there a conflict between the Courts of Appeals for the Second and Ninth Circuits but, as Judge Clark, in his recent dissenting opinion in *Hyde Park Clothes, Inc.* v. *Hyde Park Fashions, Inc.*, 204

F. 2d 223 (2nd Cir., 1953), indicated there is a difference among the judges themselves in the Second Circuit. Thus the outcome of an appeal may depend upon the assignment of judges to the panel. At page 226 Judge Clark said:

> "Plaintiff-appellant has had the misfortune—so it seems to me—to come before a panel of this court allergic to the doctrine historically associated with us because of its nurture by our most illustrious judges of protecting trade names against competition which will create confusion as to the source of goods sold under such names. The chance of the assignment calendar which has so operated against plaintiff might as easily have brought it success, to judge by the three most recent cases on this issue before us, the unanimous decision in each instance—two in fact reversing decisions below—of another panel."

This conflict of decisions between the Second and Ninth Circuits, not to mention within the Second Circuit itself, in construing the same statute, involves questions of national importance far exceeding the interests of the immediate litigants and should be resolved by this Court.

(2) The Court of Appeals erroneously decided a question of federal law in reversing the District Court by holding that petitioners' claim of infringement was too "unsubstantial" to support the dependent jurisdiction over the claim for "unfair competition".

In the present case, the respondent has admitted that he adopted the "AAA" emblem to attract the trade of "AAA" members:

> "Q. What was your purpose in putting up this sign * * * relating to the AAA? A. I lost some customers because I couldn't get the AAA and they became AAA members and they felt that they are

> getting a two-cent discount and they didn't come in to me. I stopped them and asked them, 'Why don't you come in to me?' and the answer was, 'Well, you are not AAA' " (175).

In this case there is no doubt as to the possibility of confusion or as to the intention to create it since the respondent has admitted his purpose to attract petitioners' members. He has copied the very letters of petitioners' mark and displays them in a format almost identical to that long used by the petitioner. When he identified photographs of his service station showing the signs in question (396-397), the respondent testified that he had known of the American Automobile Association for a good many years and knew its emblem, as shown in the official United States Patent Office extract (398-402). He then proceeded to admit that his use of the letters "AAA" within an oval was intended to suggest the emblem of the Association in order that motorists would get the impression that his station was in some way affiliated with the petitioners (181-183).

In the face of such evidence the Court below determined that no "substantial" claim of trade-mark infringement had been established. In reaching this conclusion the Court relied on its determination that there could be no real confusion as to the source of origin of goods or services of the respondent and therefore no substantial claim had been made out. In effect the Court relied solely on the restricted and antiquated "palming-off" doctrine. The Court excluded from consideration Section 1114(1)(b). It declared: "If the judgment is to stand, it must rest in some other section of the Act than §1114(1)(a)" and proceeded to consider §1126 completely ignoring Subsection (b) which omits the words found in Subsection (a) referring to confusion as to the source of origin, i. e., "palming-off".

Such section, which is quoted in full in the appendix hereto, reads in part:

> "(b) reproduce, counterfeit, copy, or colorably imitate any such mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale in commerce of such goods or services, shall be liable to a civil action by the registrant for any or all of the remedies hereinafter provided in this chapter * * *."

Not only has the Court below failed to give full effect to the statute but, by making jurisdiction over unfair competition claims depend upon the showing of such a "substantial" claim of infringement, it has ignored the intent of Congress to expand the rights in registered trademarks and to broaden their protection. Congress wrote into the act the following:

> "The intent of this chapter is to regulate commerce within the control of Congress by making actionable the deceptive and misleading use of marks in such commerce; to protect registered marks used in such commence[2] from interference by State, or territorial legislation; to protect persons engaged in such commerce against unfair competition; to prevent fraud and deception in such commerce by the use of reproductions, copies, counterfeits, or colorable imitations of registered marks; and to provide rights and remedies stipulated by treaties and conventions respecting trade-marks, trade names, and unfair competition entered into between the United States and foreign nations. July 5, 1946, c. 541, Title X, 45, 60 Stat. 443." (15 U. S. C. A. § 1127)

"[2] So in original. Probably should read 'commerce'."—Footnote in U. S. C. A.

As stated by Daphne Robert, author of "The New Trade-Mark Manual," and now Assistant Commissioner of Patents in the "Commentary on The Lanham Trade-Mark Act," pages 265-288 of 15 U. S. C. A., at page 284:

> "It will be noted from this statement of intent that Congress intended to occupy the entire field with respect to marks used in commerce, as well as to provide remedies against unfair competition, irrespective of whether a registered mark is involved or not. Deceptive and misleading uses of marks in commerce are actionable, and persons engaged in commerce are protected under the Act from unfair competition; and the remedies provided for infringement are made available to obtain such protection. This, perhaps, is the most far-reaching change in remedial advantages which are available under the new Act."

The erroneously narrow interpretation of the act followed by the Court below would also have an adverse effect upon the power of the United States to fulfill its treaty commitments inasmuch as the Court below would deny that Congress had provided by statute for uniform protection to citizens and to foreign nationals under international conventions against unfair competition. The lower Court's decision would deprive of meaning Subsections 1126(h) and (i) of Title 15, quoted in the Appendix, which grant to certain foreign nationals protection against unfair competition and accord to citizens or residents of the United States like benefits. Such would be one of the results of the holding below requiring for the enforcement of an unfair competition claim a showing of a "substantial" claim of trade-mark infringement, particularly under the standards imposed by the Court of Appeals.

Conclusion.

For the reasons stated, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX.

15 U. S. C. §1114

"§ 1114. Remedies; infringement; innocent infringement by printers and publishers

(1) Any person who shall, in commerce, (a) use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of any registered mark in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers as to the source of origin of such goods or services; or (b) reproduce, counterfeit, copy, or colorably imitate any such mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale in commerce of such goods or services, shall be liable to a civil action by the registrant for any or all of the remedies hereinafter provided in this chapter, except that under subsection (b) of this section the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive purchasers.

(2) Notwithstanding any other provision of this chapter, the remedies given to the owner of the right infringed shall be limited as follows: (a) Where an infringer is engaged solely in the business of printing the mark for others and establishes that he was an innocent infringer the owner of the right infringed shall be entitled as against such infringer only to an injunction against future printing; (b) where the infringement complained of is contained in or is part of paid advertising matter in a newspaper, magazine, or other similar periodical the remedies of the owner of the right infringed as against the publisher or distributor of such newspaper, magazine, or other similar periodical shall be confined to an injunction

against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodical: *Provided,* That these limitations shall apply only to innocent infringers; (c) injunction relief shall not be available to the owner of the right infringed in respect of an issue of a newspaper, magazine, or other similar periodical containing infringing matter when restraining the dissemination of such infringing matter in any particular issue of such periodical would delay the delivery of such issue after the regular time therefor, and such delay would be due to the method by which publication and distribution of such periodical is customarily conducted in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such infringing matter."

15 U. S. C. §1126

"§1126. International conventions—Register of marks communicated by international bureaus.

(a) The Commissioner shall keep a register of all marks communicated to him by the international bureaus provided for by the conventions for the protection of industrial property, trade-marks, trade and commercial names, and the repression of unfair competition to which the United States is or may become a party, and upon the payment of the fees required by such conventions and the fees herein prescribed may place the marks so communicated upon such register. This register shall show a facsimile of the mark or trade or commercial name; the name, citizenship, and address of the registrant; the number, date, and place of the first registration of the mark, including the dates on which application for such registration was filed and granted and the term of such registration; a list of goods or services to which the mark is applied as shown by the registration in the country of origin, and such other data as may be useful concerning the mark. This register shall be a continuation of the register provided in section 1(a) of the Act of March 19, 1920.

Application of this chapter to nationals of foreign countries which are parties to conventions or treaties.

(b) Persons who are nationals of, domiciled in, or have a bona fide or effective business or commercial establishment in any foreign country, which is a party to (1) the International Convention for the Protection of Industrial Property, signed at Paris on March 20, 1883; or (2) the General Inter-American Convention for Trade Mark and Commercial Protection signed at Washington on February 20, 1929; or (3) any other convention or treaty relating to trade-marks, trade or commercial names, or the repression of unfair competition to which the United States is a party, shall be entitled to the benefits and subject to the provisions of this chapter to the extent and under the conditions essential to give effect to any such conventions and treaties so long as the United States shall continue to be a party thereto, except as provided in the following subsections of this section.

Prior registration in country of origin; country of origin defined.

(c) No registration of a mark in the United States by a person described in subsection (b) of this section shall be granted until such mark has been registered in the country of origin of the applicant, unless the applicant alleges use in commerce.

For the purposes of this section, the country of origin of the applicant is the country in which he has a bona fide and effective industrial or commercial establishment, or if he has not such an establishment the country in which he is domiciled, or if he has not a domicile in any of the countries described in subsection (b) of this section, the country of which he is a national.

Right of priority.

(d) An application for registration of a mark under sections 1051, 1052, 1053, 1054 or 1091 of this title, filed by a person described in subsection (b) of this section who has previously duly filed an application for registration of

the same mark in one of the countries described in subsection (b) shall be accorded the same force and effect as would be accorded to the same application if filed in the United States on the same date on which the application was first filed in such foreign country: Provided, That—

(1) the application in the United States is filed within six months from the date on which the application was first filed in the foreign country;

(2) the application conforms as nearly as practicable to the requirements of this chapter, but use in commerce need not be alleged;

(3) the rights acquired by third parties before the date of the filing of the first application in the foreing[1] country shall in no way be affected by a registration obtained on an application filed under this subsection (d) of this section;

(4) nothing in this subsection (d) of this section shall entitle the owner of a registration granted under this section to sue for acts committed prior to the date on which his mark was registered in this country unless the registration is based on use in commerce.

Registration on principal or supplemental register; copy of foreign registration.

(e) A mark duly registered in the country of origin of the foreign applicant may be registered on the principal register if eligible, otherwise on the supplemental register in this chapter provided. The application therefor shall be accompanied by a certified copy of the application for or registration in the country of origin of the applicant.

Domestic registration independent of foreign registration.

(f) The registration of a mark under the provisions of subsections (c), (d), and (e) of this section by a person described in subsection (b) of this section shall be independent of the registration in the country of origin and the duration, validity, or transfer in the United States of

[1] So in original. Probably should read "foreign".

such registration shall be governed by the provisions of this chapter.

Trade or commercial names of foreign nationals protected without registration.

(g) Trade names or commercial names of persons described in subsection (b) of this section shall be protected without the obligation of filing or registration whether or not they form parts of marks.

Protection of foreign nationals against unfair competition.

(h) Any person designated in subsection (b) of this section as entitled to the benefits and subject to the provisions of this chapter shall be entitled to effective protection against unfair competition, and the remedies provided in this chapter for infringement of marks shall be available so far as they may be appropriate in repressing acts of unfair competition.

Citizens or residents of United States entitled to benefits of section.

(i) Citizens or residents of the United States shall have the same benefits as are granted by this section to persons described in subsection (b) of this section. July 5, 1946, c. 540, Title IX, §44, 60 Stat. 441."

28 U. S. C. §1338

"§ 1338. Patents, copyrights, trade-marks, and unfair competition

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, copyrights and trade-marks. Such jurisdiction shall be exclusive of the courts of the states in patent and copyright cases.

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent or trade-mark laws."